IN THE HIGH COURT OF DELHI

Crl.M.C.No.5042/03

Wasif & Ors. ..... Petitioners
through: Mr.R.K.Naseem, Mr.J.S. Bakshi, Mr.Shubham Asri and Mr.Sachin Sharma, Advocates

VERSUS

$ State & Anr. ..... Respondents
through: Mr.Pawan Sharma, Advocate for the State.
Mr.Pramod Ahuja and Mr. B. Shukla, Advocates for respondent no.2.

RESERVED ON: 30.10.2007

% DATE OF DECISION: 15.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioners, impleaded as accused in a complaint filed by the respondent no.2, Mohd Shamim, under Sections 307,436 and 511 IPC seek quashing of the complaint as also the summoning order dated 21.10.03.

2. Facts necessary to dispose of the present petition

are that one Sh. Mohd. Amzad Oureshi, son of respondent no.2/complainant alleged that on 3.7.01 a mob led by the petitioners came to his house bearing no.7427, Gali Chhoti Masjid, Quresh Nagar, Delhi and set it on fire. That articles worth Rs.10.5 lacs were destroyed in the fire. That in addition to burning the house, the mob also attacked him and his family members particularly his father. That as a result of the attack, he and his father sustained grievous injuries. That the mob had attacked him, his house and family members to take revenge on him as he had filed a writ petition because of which unauthorised slaughtering houses were ordered to be closed and heavy fine was imposed on its owners.

3. On the basis of the afore-noted statement of Mohd. Amzad Oureshi, the police registered a FIR No. 238/01 under Sections 147/148/149/186/152/380/506/323/435/427/383/332/34 IPC against only 11 persons.

4. Feeling dissatisfied with the action taken by the police in the afore-mentioned FIR, respondent no.2 filed a complaint under Sections 307/436 and 511 IPC. 58 accused persons were named in the said complaint. Along with the complaint, an application under Section 156(3) of the Code of Criminal Procedure, 1973 was also filed praying that a case under Sections 307/436 and 511 IPC be filed against the persons named as accused i.e. the petitioners. It was stated in

the complaint as also the application under Section 156(3), Cr.P.C. that the police have colluded with the accused persons/petitioners and is trying to shield them by implicating the accused persons only for commission of minor offences and not including serious offences i.e. Sections 307, 436 and 511 IPC.

5. Taking cognizance of the complaint and the evidence led by the complainant, vide order dated 21.10.03 the learned Metropolitan Magistrate summoned the petitioners to face trial for offences under Section 307 and 436 of the IPC and also directed the issuance of non-bailable warrants against the petitioners.

6. Aggrieved by the order dated 21.10.03 passed by the learned Metropolitan Magistrate, the petitioners have approached this Court under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the complaint and the summoning order.

7. In support of the petition, learned counsel for the petitioners drew support from the Section 210(1) of CrPC, 1973 and contended that in view of the provisions of Section 210(1) the learned Metropolitan Magistrate ought not to have issued process against the petitioners as the investigation in FIR No.238/01 which pertained to the same incident was already in progress.

8. Section 210 of the Code of Criminal Procedure, 1973 reads as under :-

> **“210. <u>Procedure to be followed when there is a complaint case and police investigation in respect of the same offence</u>**.- (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that <u>an investigation by the police is in progress</u> in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.
>
> (2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.
>
> (3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

9. Before the provisions of Section 210(1) can be applied in a given case, it is essential that :-

i) Complaint case and FIR case pertains to same offence; and

ii) Investigation in the FIR case must be in progress.

10. In the instant case, it has to be thus seen that whether at the time of issuance of summoning order dated 21.10.03, investigation in FIR No.238/01 was in progress or was concluded.

11. A perusal of the orders passed by the learned Metropolitan Magistrate in the complaint case is as follows :-

S. No.	Date of Order	Description of the order
1.	6.08.01	Complaint filed by the complainant.
2.	8.08.01	Learned MM directed concerned S.H.O. to file original FIR No.238/01 and status report.
3.	14.08.01	Learned MM noted that only 11 persons out of 58 persons are implicated in the FIR. MM directed the SHO to investigate the matter against all the 58 accused persons and in view of allegations stated in the complaint.
4.	3.9.01	Complainant stated that SHO is not recording his statement. SHO directed to file inquiry report.
5.	28.09.01	Matter adjourned.
6.	31.10.01	Complainant's statement recorded.
7.	17.11.01	Complainant sought to file list of witnesses.
8.	7.12.01	Complainant allowed to file list of witnesses.
9.	19.03.02	Matter Adjourned.
10.	21.05.02	Complainant's evidence recorded.
11.	20.04.02 09.01.03	Matter adjourned.
12.	12.03.03	Order records that challan in FIR No.238/01 is filed.

13.	31.10.03, 1.7.03 and 6.8.03	Matter adjourned.
14.	1.09.03 3.09.03	Complainant sought to re-examine himself.
15.	11.09.03	Matter adjourned.
16.	21.10.03	Order issuing process against the accused persons.

12. Order dated 12.03.03 clearly records that the police had filed challan in FIR No.238/01.

13. Section 173 of the Code of Criminal Procedure, 1973 stipulates that on the completion of investigation, the officer in-charge of the police station is duty bound to submit a report (challan) to the Magistrate empowered to take cognizance of the offence.

14. Thus, from the order dated 12.03.03, it is apparent that the police had already concluded the investigation in FIR No.238/01 when vide order dated 21.10.03 the learned Metropolitan Magistrate directed issuance of the process against the accused persons. From a perusal of the orders, it is further apparent that the learned Metropolitan Magistrate issued process against the accused persons only after satisfying itself that the challan in the FIR No.238/01 had already been filed.

15. At this stage, I further note the judgment of the

Supreme Court in the decision reported as *Hari Singh v State of U.P.* AIR 2006 SC 2464. In para 4 of the said decision, the Supreme Court had observed as under :-

> "4.When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Reg) through its President v. Union of India and Ors [(1996) 11 SCC 582].It was specifically observed that a writ petition in such cases is not to be entertained.

16. In view of the above discussion, I find no infirmity in the order dated 21.10.03.

17. The petition is devoid of any merits and is dismissed.

18. No costs.

November 15, 2007 PRADEEP NANDRAJOG

vg JUDGE